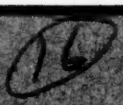

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No. 609

In the Supreme Court of the United States

OCTOBER TERM, 1943

MINNIE B. VAN DUSEN, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	2
Statement	2
Argument	5
Conclusion	6

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OPINIONS BELOW

The opinion of the United States Board of Tax Appeals (R. 39–44) is a memorandum opinion not officially reported. The opinion of the Circuit Court of Appeals (R. 55) is reported in 138 F. 2d 510.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered October 18, 1943 (R. 55). The petition for a writ of certiorari was filed January 15, 1944. Jurisdiction of this Court is invoked

under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, when the taxpayer created a trust to pay the premiums on insurance policies on the life of her husband, and at the same time the husband created a similar trust to pay the premiums on insurance policies on the life of the wife, the income of the taxpayer's trust so employed constitutes taxable income of the taxpayer under Sections 22 (a) and 167 of the Revenue Acts of 1936 and 1938.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix to the Commissioner's brief in the companion case of Charles B. Van Dusen (No. 608).

STATEMENT

The taxpayer on February 28, 1931, created an irrevocable trust of which her four sons were trustees. She assigned to the trust 31,250 shares of the common stock of S. S. Kresge Company and 34 life insurance policies on the life of her husband, Charles B. Van Dusen, in the aggregate amount of $990,000. (R. 40–41.)

The trust agreement, which is set out in full as Joint Exhibit A–1 (R. 23–39), provided in paragraphs 3 and 4 that the trustees should col-

lect the income of the trust and apply the same insofar as necessary to the payment of the premiums upon the assigned insurance policies upon the life of the husband (R. 25–26, 41). Should the income of the trust exceed the amount necessary for the payment of the premiums, the trustees had absolute discretion either to pay the excess to the taxpayer or to add the same to the corpus of the trust (R. 26, 41).

The trust further provided (Par. 5) that on the death of Charles B. Van Dusen the trustees should collect the proceeds from life insurance policies on his life and add them to the principal of the trust. The entire net income of the augmented trust should be paid to the grantor, Minnie B. Van Dusen, for her life. (R. 26–27, 41–42.)

On the death of the grantor, the taxpayer herein, the trustees were directed to divide the trust estate into four equal parts for the benefit of the taxpayer's four sons, paying to each of them the income until he attained the age of 40, and on attaining such age, his share of the principal. There were detailed provisions for the distribution of the corpus and income of the trust, if any son should predecease the taxpayer, or die before reaching the age of 40, to the surviving issue or spouse of each son, or if none, to the surviving brother. (Par. 6, R. 27–32, 42.)

The trustees were further empowered to use any portion of the principal of the trust to pur-

chase property from or to make loans to the executors and/or trustees of the estate of Charles B. Van Dusen, if deemed by them to be for the best interests of the beneficiaries of the trust (R. 33).

It also appears from the companion case of *Charles B. Van Dusen* v. *Commissioner,* No. 608, heard, submitted and decided by the Circuit Court of Appeals as one case with the instant case (R. 55), that on February 26, 1931, two days before the execution of the trust instrument here involved, her husband, Charles B. Van Dusen, executed to the same trustees a corresponding instrument of trust to pay the premiums on her life insurance (No. 608, R. 30–43). In his case the fund of the trust consisted of 10,000 shares of the common stock of S. S. Kresge Company and insurance policies on the life of his wife, Minnie B. Van Dusen, in the aggregate amount of $200,000 (No. 608, R. 45). The net income of this trust, on the death of the wife, was payable 50 per cent to the grantor for life, and 50 per cent to be divided equally among his surviving children. The trustees of that trust were empowered to purchase property from or to loan money to the estate of the wife, Minnie B. Van Dusen. The other provisions of the trust were substantially identical with those of the trust created by Minnie B. Van Dusen.

The Commissioner of Internal Revenue determined that the portion of the income of the trust created by the taxpayer used to pay the premiums on the life insurance of the husband constituted taxable income of the taxpayer (R. 8–12, 17–20). He also determined that the portions of the income of the trust created by the husband used to pay premiums on the life insurance of the wife constituted taxable income of the husband. (No. 608, R. 10–15, 20–23.)

The Board of Tax Appeals upset this determination with respect to each of the trusts (R. 39–44, No. 608, R. 44–48). The Circuit Court of Appeals in one judgment (R. 55, No. 608, R. 61) reversed and remanded each case to the Tax Court for "further proceedings in accordance with the statute and the order of this court."

ARGUMENT

The present case involves the identical issues presented in the case of *Charles B. Van Dusen* v. *Commissioner,* No. 608. The argument of the Commissioner in that case is therefore made, by reference, his argument in the present case.

CONCLUSION

There is no conflict and the decision below is correct. The petition for certiorari should be denied.

Respectfully submitted,

CHARLES FAHY,
Solicitor General.
SAMUEL O. CLARK, Jr.,
Assistant Attorney General.
SEWALL KEY,
HELEN R. CARLOSS,
RAY A. BROWN,
Special Assistants to the Attorney General.

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